

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LANTHEUS MEDICAL IMAGING, INC.,

Plaintiff,

v.

ZURICH AMERICAN INSURANCE
COMPANY,

Defendant.

NY
MENT
RONICALLY FILED
FILED: 1/19/12

Case No. 10 Civ. 9371 (JPO) (JLC)

ECF CASE

**REQUEST TO TAKE EVIDENCE ABROAD OF
ATOMIC ENERGY OF CANADA LIMITED (LETTERS ROGATORY)**

FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK TO THE HONORABLE ONTARIO SUPERIOR COURT OF
JUSTICE:

WHEREAS a proceeding is pending before this Court in New York, New York, between Lantheus Medical Imaging, Inc. ("Lantheus") and Zurich American Insurance Company ("Zurich"). In this proceeding, Lantheus seeks declaratory relief and money damages arising from Zurich's alleged breach of its contractual obligation, under an insurance policy issued to Lantheus, to indemnify Lantheus for financial loss arising from the extended shutdown of a Canadian nuclear reactor, known as the NRU Reactor, owned and operated by Atomic Energy of Canada Limited ("AECL"), a Canadian crown corporation.

WHEREAS, Lantheus has applied to this Court for the issuance of Letters Rogatory requesting the assistance of the Honorable Ontario Superior Court of Justice in obtaining certain documents and testimony in the possession of AECL as set forth in Appendix A hereto.

WHEREAS, this Court has granted Lantheus' application for the reasons set forth in this Court's Opinion and Order of January 11, 2012 (attached hereto as Appendix B).

WE THEREFORE REQUEST that, in furtherance of justice, you cause AECL to appear, at such time and place as you shall appoint, before any such person who, according to the laws of Ontario, is competent to preside over the examination of witnesses, to answer questions under oath or affirmation by an attorney for Lantheus, and to allow for the testimony of AECL to be reduced to writing. It is the understanding of this Court that the granting of assistance of the type herein requested is authorized by the Canada Evidence Act, R.S.C. 1985, chapter C-5, and the Ontario Evidence Act, R.S.O., 1990, chapter E-23. The courts of the United States are authorized to extend similar assistance to the tribunals of Canada by Title 28, section 1782 of the United States Code.

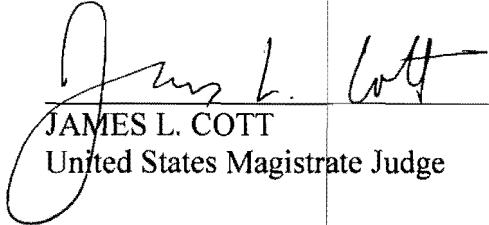
IT IS FURTHER REQUESTED that you cause AECL to produce to Brett Harrison, an attorney at the law firm of McMillan LLP, and located at Brookfield Place, Suite 4400, 181 Bay Street, Toronto, Ontario M5J 2T3, Canada, no less than twenty-one days in advance of such examination the documents described in Appendix A hereto.

IT IS FURTHER REQUESTED that you cause the examination of AECL to be reduced to writing and conducted in accordance with all applicable laws of evidence and procedure.

IT IS FURTHER REQUESTED that you permit defendant Zurich at its own expense to obtain copies of any documents that are produced by AECL and to participate in any depositions that are permitted.

THE UNITED STATES DISTRICT COURT for the Southern District of New York extends to the judicial authorities of Ontario the assurances of its highest consideration.

Dated: JANUARY 19, 2012
New York, New York


JAMES L. COTT
United States Magistrate Judge

Appendix A

The term "documents" as used below includes reports, memoranda, data or analysis of data; the term "NRU Reactor Shutdown" means the continued shutdown of the NRU reactor following the leak of heavy water detected on May 15, 2009 as described in the S99-Detailed Report of AECL bearing the "ImpAct No. NRU-09-4289."

1. The documents which AECL considered or generated in evaluating whether or not radiation caused or contributed to an alteration of the micro-structure of the aluminum alloy composing the NRU Reactor vessel, and whether any such alteration caused or contributed to the May 2009 shutdown of the NRU reactor.
2. The documents which AECL considered or generated in evaluating the cause or causes of the nitric acid formation in the Annulus of the NRU reactor.
3. The documents which AECL considered or generated in evaluating the nitric acid concentration in the Annulus of the NRU reactor at the time of or during the period prior to the May 15, 2009 NRU reactor shutdown.
4. The documents which AECL considered or generated in evaluating carbon dioxide flow rates in the Annulus, variations of such flow rates over time, air leakage into the Annulus, and any breakdown or failure of any carbon dioxide pumping system in the NRU reactor, during the period prior to the May 15, 2009 reactor shutdown.
5. The documents which AECL considered or generated in designing or implementing a more effective carbon dioxide distribution system in the Annulus and methods for preventing air leaks into the Annulus after May 2009.
6. The documents which AECL considered or generated in evaluating whether or not inadequate water drainage in the Annulus of the NRU reactor during the period prior to the May 15, 2009 NRU Reactor Shutdown caused or contributed to that shutdown and in evaluating any breakdown or failure of any water drainage system in the Annulus.

7. Documents reporting on the results of inspections and scans of the NRU reactor vessel conducted in 2004, 2005, 2009, 2010 and 2011.

8. The results of any coupon tests (that is, tests regarding, collecting or assessing damage, in or around the Annulus and reactor vessel) conducted following the May 15, 2009 NRU Reactor Shutdown.

9. Documents graphically or numerically depicting the specific locations of the damage to the NRU reactor vessel (including “pitting”, leak holes, “dish shaped” irregularities, and thinning of the reactor vessel wall) at the time of the shutdown.

10. The documents which AECL considered or generated in evaluating whether or not defective fuel had any role in causing or contributing to the May 2009 shutdown of the NRU reactor.

11. The documents which AECL considered or generated in evaluating whether or not any chemicals, desiccants or “impurities” were introduced into or found in the Annulus or in water in the Annulus space at the time of or during the period prior to the May 2009 NRU Reactor Shutdown.

12. Photographs, drawings, or other images depicting damage to the NRU reactor vessel (including “pitting” or leak holes) at or around the time of the NRU Reactor Shutdown.

13. To the extent not publicly available in unredacted form on the AECL or Canadian Nuclear Safety Commission (“CNSC”) websites, the following reports analyzing or addressing the cause(s) and effects of the May 2009 shutdown authored, in whole or in part by any of the following persons: I. Muir, T.A. Moir, C. Bromly, G. Arsenault, K. Sedman, L.

Lupton, G. Mark and C.W. Turner. To the extent that such documents are publicly available on the AECL or CNSC websites, please provide the specific internet URLs of the documents.

14. Any metallurgical or chemical analysis of the wall of the reactor vessel or the Annulus performed following the May 15, 2009 NRU Reactor Shutdown.

Appendix B

Opinion and Order, January 11, 2012